UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TREELINE 990 STEWART PARTNERS LLC, Plaintiff, vs. RAIT ATRIA, LLC, RAIT PARTNERSHIP, L.P., RAIT GENERAL, INC. and 990 STEWART AVENUE INVESTORS LLC, Defendants.	Civil Action No. 10-cv-5234 (JS)(ETB)

DECLARATION OF C. GLENN SCHOR

C. GLENN SCHOR, declares as follows under the penalty of perjury:

1. I am an attorney at law duly admitted to practice before the Courts of the State of New York and the United States District Court for the Eastern District of New York. I am the President of Treeline 990 Stewart Partners LLC ("Treeline 990"), the plaintiff herein. I am also the President of 990 Stewart Avenue Investors LLC ("990 SAI"), one of the defendants herein.

2. I am personally familiar with all of the facts and proceedings heretofore had herein and submit this declaration in opposition to the motion of defendants RAIT Atria, LLC, RAIT Partnership, L.P., RAIT General, Inc. (collectively, "RAIT" or the "RAIT Defendants") to dismiss the complaint and to strike 990 SAI as a proper party defendant.

The Underlying Loan Transaction

3. The relationship between Treeline 990 and RAIT is one of borrower and lender. RAIT concedes so much in its motion papers. Indeed, Kenneth R. Frappier – the Executive Vice President of RAIT General, Inc., who submitted a declaration on behalf of all the RAIT Defendants – quotes without objection the allegation from the Complaint that "[o]n or about November 1, 2006, the parties herein entered into a commercial transaction whereby, in substance, RAIT agreed to loan $7.75 million to Treeline 990." (Frappier Dec. ¶ 3.) Thus, neither Frappier nor RAIT dispute that the underlying transaction here is and always has been a loan.

4. In fact, the form of the loan between the parties is common and usual in the real estate industry, and creates what is known in that industry as a "mezzanine loan." A mezzanine loan is a secondary form of financing that allows a borrower to obtain greater leverage than the amount traditionally provided by first mortgage lending. RAIT is a well known and active purveyor of mezzanine loans, and surely understands that such a loan is at issue here.

5. Unable to contradict the nature of the underlying transaction, Mr. Frappier asserts in his declaration that "[t]he transaction to which that allegation refers must be the Operating Agreement of 990 Stewart Avenue Investors LLC dated as of November 1, 2006 (the 'Agreement'), because that is the only transaction RAIT entered into with the Plaintiff at around that time that included those types of terms." (*Id.*) This apparent effort to utilize the title of one agreement to somehow recast the nature of the transaction is self-serving and unsupportable.

6. The written agreements between the parties relied upon by RAIT, though couched as a partnership agreement and an amendment thereto, are in essence loan documents and do not constitute the underlying transaction in its entirety. These documents provide a mechanism for interest payments to RAIT, default rights including default interest favoring RAIT, and a method for RAIT to recover on Treeline 990's ownership interest in the building located at 990 Stewart Avenue, Garden City, New York (the "Building"), should there be a default in payment to RAIT. Other loan documents were executed as well, including guarantees of "non-recourse" carve-outs by me. This is a standard requirement in a commercial loan, but not at all in a simple partnership.

7. As a practical matter, the nature of the underlying transaction as a loan has been repeatedly confirmed by the parties during the course of their dealings to date. Each month, defendant RAIT Partnership LP sends an invoice to defendant 990 SAI demanding the payment of interest on the loan in the amount of $67,812.50. A sample of such invoice is annexed hereto as Exhibit 1. In response, each month a check for such interest payment is issued by Treeline 990 Stewart LLC, which is the fee owner of the Building and is also a subsidiary of 990 SAI, payable to RAIT Partnership LP, in the amount of $67,812.50. A sample of such check is annexed hereto as Exhibit 2.

8. The Consolidated Financial Statements of 990 SAI for the years 2008 and 2009, a true and correct copy of which is attached hereto as Exhibit 3, confirm that the money received from RAIT is a loan and that the monthly payments are interest expense. RAIT was provided with these financial statements and never objected to the characterizations.

9. Similarly, RAIT provided responses to audit inquiries, such as the sample attached hereto as Exhibit 4, in which it confirmed the details of the underlying loan, including the unpaid principal balance and annual interest payments.

10. Accordingly, RAIT knows full well that the true nature of the underlying transaction is a loan, and any position to the contrary is asserted in an attempt to obfuscate the true facts in an effort to avoid this litigation.

The Agreement to Buy the Loan.

11. As is alleged in the Amended Complaint, the parties ultimately agreed that Treeline 990 would buy the loan from RAIT at a price equal to 62.5% of the face amount of the loan. (Amended Complaint ¶¶ 16-32.) The evidence herein will establish the existence of that agreement.

12. To begin, RAIT itself does not dispute that negotiations between the parties leading to this agreement took place over the course of more than one year. These conversations were primarily between me and Michael Schor on behalf of Treeline 990, and Greg Marks on behalf of RAIT. During the course of the lengthy negotiations, Michael Beatty and Mr. Frappier also joined on behalf of RAIT, but Marks continued to take the lead role. Marks initiated conversations, made each offer conveyed by RAIT and ultimately confirmed that a transaction had been agreed to between the parties to sell the loan to Treeline 990 at the stated discount.

13. In fact, it was Marks, on behalf of RAIT, who first made a proposal that RAIT would sell Treeline 990 the loan, which had a maturity date of July 2015, at a discount of 25%. This

offer came in or about July 2009, after Marks and I concluded a similar sale of a loan RAIT made to an affiliate of Treeline 990, involving a building located at 175 Remsen Street, Brooklyn, New York. In that transaction, the loan was sold to the affiliate of Treeline 990 at a discount of 15%. The discount was lower on the 175 Remsen Street loan than the percentages we discussed (and ultimately agreed to) with respect to the Building, because the Remsen Street loan had a much shorter time pending until loan maturity (three years, rather than six). The 175 Remsen Street transaction had no executory contract – just closing instruments which were handled by our in-house counsel and the defendants' in-house counsel after an agreement had been made. Following through on its agreement, RAIT took the money and surrendered its security position.

14. With respect to the Building, Marks' initial offer to sell the loan at a 25% discount to Treeline 990 was rejected, and a course of complex and lengthy negotiations followed. These conversations at first did not result in an agreement for a discounted payoff, but RAIT did agree to modify the terms of the loan and the security instrument between us (the "Agreement" cited by Frappier) such that one million dollars that was being held by RAIT in escrow as further collateral for the loan and upon which we were paying interest would be released to Treeline 990, to pay for tenant improvement and leasing commissions in an effort to obtain new leases at the Building. The nationwide economic collapse several years ago resulted in lease terminations by a significant number of the Building's major tenants, including AIG, Countrywide and Wachovia. Finding new tenants was a primary focus of our efforts to repair the financial circumstances.

15. The modification of the Agreement was reduced to writing (it is attached to the Frappier Declaration as Exhibit B) and the parties performed the modification, although for a time RAIT wrongfully attempted to ignore the agreed terms and to withhold the funds from Treeline 990.

16. During the period from approximately July 2009 to August 2010, we continued to meet with RAIT to discuss the serious financial issues confronting the Building. Marks evidenced what we believed to be a sincere desire to assist in resolving the financial difficulties and encouraged us to continue to bring new cash to the property, to lease space and to improve the Building. I repeatedly indicated to Marks that this was a significant financial strain on Treeline 990, and that RAIT would need to help out or Treeline 990 could not continue to pour money into the Building. Treeline 990 has added in excess of five million dollars of additional equity above its initial investment to fund the Building, and to this day continues to support the Building financially.

17. Ultimately, after many conversations, and a meeting with Marks and Beatty at RAIT's offices, Marks requested that Treeline 990 make a proposal with respect to relief needed from RAIT. Marks and Beatty both pushed the concept of a sale of the loan to Treeline 990 at a discount. I explained to them that Treeline 990 did not then have the resources to fund such a purchase, and that we would be constrained to find alternative financing for any such payoff. Moreover, I indicated that a 25% discount was not sufficient to make alternative borrowings feasible. Ultimately, on behalf of Treeline 990, I proposed a choice of two options: a loan modification; or the sale of the loan to Treeline 990 at a 50% discount. The latter was always envisioned, communicated and discussed as a sale of the loan, not a modification of a partnership agreement.

18. In the summer of 2010, more meetings took place with Marks and, ultimately, with Marks, Frappier and Beatty. The meetings took place at RAIT's offices in Philadelphia. At the last meeting at which Marks, Frappier and Beatty were all present, there were two topics discussed: (a) RAIT's back tracking on releasing the one million dollars from escrow as previously agreed; and (b) the possibility of further economic relief from RAIT to assist Treeline 990 in continuing to improve the Building. At the conclusion of the meeting, we agreed that RAIT would at last release the balance of the one million dollars, that Frappier, Marks and Beatty would consult on the other matters discussed, and that Marks would contact us to follow up.

19. Soon after the meeting, Marks telephoned me and advised that RAIT had considered the situation and concluded that there were only two scenarios it could offer: (a) the sale of the loan at a discount to face of 37.5% (*i.e.,* an early payoff at 62.5% of the face amount of the debt); or (b) a loan modification, wherein Treeline 990 would deposit $1.5 million with RAIT, which would act as an interest rate reserve, to cover debt service to RAIT that the Building was short, and RAIT would advance $1.5 million of new money as a Tenant Improvement, Lease Commission and Capital Improvement Reserve, for use in the Building. Under the second proposal, the funds would bear interest at the same rate as the loan and each would be the first monies out at loan maturity – the Building would be then sold and, after these priority sums were paid, RAIT would be repaid its loan and the Borrower would retain the balance of the proceeds as repayment of the equity.

20. I told Marks that I was not able to accept either offer immediately, and that most likely we would need to find alternate sources to provide the funds if we were to go the route of a discounted payoff. I also told Marks that it would take a little time for me to resolve

this and he said it was up to us – RAIT's proposal was "take it or leave it" – "buy the loan back" or put up the escrow funds.

21. In reliance on RAIT's offer and Marks' word, I commenced a search for sources of financing, and obtained several that were willing to participate in funding a discounted payoff of RAIT's loan. I then convened a meeting of Treeline 990's members and explained to them all that had transpired with RAIT. I told them of the last conversation with Marks, and requested their authorization to conclude one of the two proposals made by RAIT. After much discussion, the members of Treeline 990 decided to accept RAIT's offer to sell the loan to Treeline 990 at a 37.5% discount. Several of the members of Treeline 990 were willing to provide the financing needed to close the discounted payoff with RAIT and to earn a return on their new investment. I told the members that I would try to speak with Marks forthwith to conclude the transaction.

22. Thereafter, I contacted Marks and reviewed with him the two offers made by RAIT. I restated them both to him as outlined herein, and he agreed that I correctly restated the offers that he made on behalf of RAIT. I asked him if both of the offers remained available, and he said absolutely. Indeed, Marks reiterated that there were no other offers available, and that I needed to take one or the other, if any. I then accepted the offer to buy the loan at a 37.5% discount. Marks then stated in dollars the amount that would be due to RAIT at closing. We agreed on the amount and he said we have a deal.

23. Having agreed on the central terms, Marks then asked me when I would close the transaction to buy the loan, and I told him I was targeting September 15, 2010, as a closing date. I further stated that Michael Schor, acting as in-house counsel for Treeline

990, would prepare any necessary closing documents and would handle the legal aspects of the closing. I asked Marks if he wanted to follow the format in the closing documents of the 175 Remsen Street transaction, or if RAIT would allow Treeline 990's members funding the purchase to assume RAIT's position without re-drafting new security documents. Marks said he would find out and let me know shortly. He congratulated me and said that we had made the better choice and he was glad that this protracted negotiation was at an end.

24. Based on the agreement reached with RAIT, Treeline 990 continued its efforts to acquire the financing that would be necessary to purchase the loan, and continued funding improvements at the Building designed to improve the economic situation.

25. I did not hear from Marks for several days and, after a period, I called his office and did not get a return call. I understand that Michael Schor also attempted to contact Marks, and ascertained that he was away on vacation. Subsequently, I emailed Marks and indicated that time was wasting and I needed an answer to my question on the buyback structure of the transaction, as I was targeting a September 15 closing date. Marks responded by email and indicated that he was away, but that I could contact Frappier to get the answer. I thought that this was rather peculiar, as I always dealt with Marks and because, based on what Marks had told me, I understood that Frappier was a difficult individual to deal with (being generous to the statements that mark actually made).

26. I wrote back to Marks, by email, as follows:

> Greg,
>
> Frankly I do not think it is my place to call Frappier. We struck a deal and we raised the money to conclude the deal.
>
> I think it is proper that I wait for you to return from vacation and for you to shepard this through the internal workings at RAIT so that I can advise our counsel whether the partnership interest can be taken over by the new money or your entity will exit the partnership and a new entity will need to enter the partnership.
>
> Please conclude this on your return so we can close promptly as was discussed.
>
> Cordially,
>
> Glen

27. Marks responded to my email with a one word email response:

> Ok

28. A true and correct copy of this chain of emails is attached herewith as Exhibit 5. In responding as such, Marks verified: (a) there was a deal to sell the loan to Treeline 990 at a discount; and (b) that he would get the answer to my inquiry upon his return from vacation.

29. Despite the foregoing, no further response was ever received from Marks and RAIT never materialized to close the transaction. Accordingly, Treeline 990 commenced this litigation, alleging causes of action for breach of contract, fraud and negligent misrepresentation, seeking both specific performance requiring RAIT to live up to its agreement and appropriate money damages.

30. In moving to dismiss the Amended Complaint, RAIT does not dispute the fundamental underlying facts or provide a statement that the allegations are untrue. Indeed, RAIT confirms them. RAIT is not denying that it made a deal through Marks, its employee and agent, to sell this loan to the plaintiff at a discounted payoff of 37.5% with a closing date on or about September 15, 2010.

31. Instead, RAIT is trying to walk away from its agreement to sell the loan at a discounted payoff and to play a game of semantics – calling an independent contract to sell a loan a "partnership modification" and asserting that such an agreement needed to be in writing, notwithstanding the conduct of RAIT on a prior similar transaction, and RAIT's understanding that Treeline 990 was taking action in reliance on the agreement between the parties.

32. RAIT's conduct in this regard in unconscionable. RAIT implored Treeline 990 to contribute millions of dollars towards improvements and other efforts to obtain new tenants in the Building. RAIT received monthly financial reports and surely understood that, in reliance on the deal, Treeline 990 was in fact providing such funds to the Building. Treeline 990 made capital improvements and its partners funded more money for tenant improvements, all in reliance on the negotiations for economic relief and ultimately the discounted pay off that RAIT offered from the very beginning. Indeed, RAIT's agreement to sell the loan at the negotiated discount was a key motivation in Treeline 990's decision to continue funding the Building. RAIT's insistence now that the agreement is unenforceable is self-serving, fraudulent and submitted in bad faith.

33. Notably, RAIT submits nothing from Marks denying the allegations in the Amended Complaint or otherwise in support of the motion. There is a declaration from Frappier, but that document simply attaches two written agreements – it is for all intents and purposes silent on the issues raised in RAIT's motion.

34. Under these circumstances, and for the reasons set forth in the accompanying memorandum of law, we respectfully submit that RAIT's motion to dismiss the Amended Complaint should be denied.

The Addition of 990 SAI as a Party

35. Additionally, the portion of RAIT's motion seeking to dismiss 990 SAI from the case also should be denied.

36. As RAIT notes, this action was initially commenced in New York State Supreme Court, Nassau County. RAIT Atria, LLC was, at the time, the only named defendant.

37. Subsequent to commencing the action, Treeline 990 brought a motion in the State court proceeding, pursuant to CPLR ¶¶ 2601 and 2701, to deposit all further interest payments and financial reporting into court pending the resolution of this dispute. RAIT did not oppose that motion on the merits but, instead, removed the case to this Court.

38. As indicated above, the monthly interest payments to RAIT are made by 990 SAI, through its subsidiary Treeline 990 Stewart LLC, to defendant RAIT Partnership LP. While Treeline 990 is the Managing Member of 990 SAI, it is not the only member and I thought it inappropriate to unilaterally cause 990 SAI to cease making monthly interest

payments to RAIT. Indeed, we presume that RAIT would have taken issue with any such action and we opted not to engage in self-help.

39. Accordingly, and upon further reflection on the interworkings of the relationship between the parties here, we determined it appropriate to add 990 SAI as a party to the action and to seek relief from an appropriate court to address payments and reporting arguably owed to RAIT during the pendency of the litigation.

40. As indicated at the outset of this Declaration, I am the President of Treeline 990 and also the President of 990 SAI. I recognize that this presents me with two distinct roles in this litigation. Speaking for plaintiff Treeline 990, it is our desire to have a fair hearing and resolution of this dispute, and to protect our assets in the interim. We understand that RAIT may have serious financial difficulties and are concerned that, even when it prevails, Treeline 990 will not be able to recover payments it has already made and/or payments it makes during the pendency of this litigation. Accordingly, we believe that depositing the disputed funds into court is fair and appropriate.

41. Speaking for defendant 990 SAI, the company has no particular stake in the outcome of the litigation, other than to insure that there is no independent liability to any of the other parties. Interpleading or otherwise depositing the disputed funds into court therefore suits the interests of 990 SAI as well. If RAIT agreed to have the disputed funds deposited into Court pending the outcome of this action, Treeline 990 would be willing to dismiss its claims against 990 SAI.

Pursuant to 28 U.S.C. ¶ 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 14, 2011

C. Glenn Schor

Francine S. Feuer

FRANCINE S. FEUER
Notary Public, State of New York
Commission No. 01FE6190296
Qualified in Nassau County
Commission Expires July 21, 2012